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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 143

H. HENRY YOUNG,
PETITIONER,

v.

UNITED STATES,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MAX KABATZNICK
10 State St.,
Boston, Mass.

ISRAEL BERNSTEIN,
42 Batterymarch,
Boston, Mass.
MAYER RABINOVITZ
10 State St.,
Boston, Mass.
of counsel

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INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement of the Case	3
Reasons for Granting the Writ	6
Conclusion	13
Appendix A: Opinion Below	14
Appendix B: Statute Involved	16

Citations

Cases

Bremmer v. *United States*, 347 U.S. 227	9
Burns v. *United States*, 287 F.2d 216	9
Daudridge v. *U. S.*, 356 U.S. 259	10, 11
Domenica v. *United States*, 292 F.2d 483	7, 8
Gearhart v. *United States*, 272 F.2d 499	9, 11
Green v. *United States*, 365 U.S. 301	6
Hamilton v. *United States*, 219 F.2d	9
Iauges v. *Green*, 282 U.S. 351	9
Larson v. *United States*, 296 F.2d 167	9
Poole v. *United States*, 250 F.2d 396	8
Powell v. *Alabama*, 287 U.S. 45	9
Reynolds v. *Cochoran*, 365 U.S. 525	9, 10
Swaggerty v. *U. S.*, 218 F.2d 875	8
United States v. *Davis*, 212 F.2d 264	6
United States v. *Lester*, 247 F.2d 496	7, 8
United States v. *Lias*, 173 F.2d 685	12, 13
United States v. *Mack*, 249 F.2d 421	6, 8

Statutes

Rule 11, Federal Rules of Criminal Procedure	2, 6, 7, 8
Rule 32 (d) Federal Rules of Criminal Procedure	3, 5, 8

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Petitioner prays that a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit be entered in the above-entitled case decided April 27, 1962.

Citations to Opinions Below

No opinion was written by the District Court. The opinion of the Court of Appeals for the First Circuit is printed as Appendix A of this petition.

Jurisdiction

The judgment of the Court of Appeals was entered on April 27, 1962. (DR 174)*. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

Questions Presented

1. Before accepting a plea of guilty must a federal judge, under Rule 11 of the Federal Rules of Criminal Procedure, even though the defendant is represented by counsel, determine that the plea is made not only voluntarily but with an understanding of the nature of the charges?

2. Does the failure to hold a hearing before denial of a pre-sentencing motion to withdraw a plea of guilty constitute an abuse of discretion, a violation of the right to trial by jury as guaranteed by Article III and by the Sixth Amendment of the United States Constitution, or a violation of procedural due process as guaranteed by the Fifth Amendment?

3. When during the course of a hearing on a post-sentencing motion to withdraw a guilty plea there is uncontradicted evidence that the defendant had a mental illness at the time that the guilty plea was entered, is the trial judge required to order a medical examination to determine whether the defendant was actually so disturbed that his plea was not made voluntarily and with an understanding of the charges against him?

4. When there is evidence that the defendant's attorney made representations that a probationary sentence and a small fine would be recommended, and the defendant testifies that he believed these representations and relied on them when he pleaded guilty, is it error to hold that such

*Reference to "DR" are to the Record Appendix filed by the petitioner, and references to "G.R." are to Respondent's Record Appendix.

evidence is of no legal significance when deciding whether "manifest injustice" will result if the guilty plea is not withdrawn?

Statute Involved

The statutory provisions involved are Rule 11 and Rule 32 (d) of the Federal Rules of Criminal Procedure. These provisions are printed in Appendix B attached hereto.

Statement of the Case

On October 14, 1960 the petitioner was indicted with three co-defendants under an indictment which alleged concealment of assets from a trustee in bankruptcy in violation of 18 U.S.C. section 152 in Counts 1 through 21. In Count 22 the petitioner was accused of conspiracy under 18 U.S.C. section 371. (GR 6-35) The petitioner was arraigned and pleaded not guilty on October 31, 1960.

Trial was commenced on October 3, 1961 with the petitioner as the sole defendant, the other defendants having pleaded guilty. Before the Government resumed its opening statement following the noon recess on the first day of trial, a change of plea was entered by the petitioner and accepted by the court. During the recess a conference had been held in the judge's lobby. The record shows that the following colloquy took place: (DR 34-35, GR 55-56).

Afternoon session
2:15 P.M.

(Conference in the lobby)
The Court: Take the plea
The Clerk: United States v H. Henry Young
Mr. Noonan: I understand, may it please the Court,

that there is to be a change of plea in this case. May I ask that it be taken?

The Court: Take the plea, Mr. Clerk.

The Clerk: H. Henry Young, to three counts of this 22 count indictment, Count 1, Count 2 and Count 22, charging you with wilfully, unlawfully and knowingly concealing property of the bankrupt estate from the Trustee in Bankruptcy and with wilfully and knowingly conspiring to defeat the bankruptcy law, you have previously pleaded not guilty. Do you wish to change your plea?

Defendant H. H. Young: Yes, I do.

The Clerk: What say you now as to Counts—

Defendant H. H. Young: On count 1 and 2, that is specifically Madison?

The Court: Yes, that's right. Counts 1 and 2 refer to Madison.

Defendant H. H. Young: Yes, sir! I plead guilty.

The Clerk: What say you to Count 2?

Defendant H. H. Young: Guilty

The Clerk: What say you to Count 22?

Defendant H. H. Young: Guilty.

The Court: Now, you entered that plea voluntarily, did you Mr. Defendant?

Defendant H. H. Young: Yes, sir!

The Court: All right, sir. Now, the case will be continued on the same bail, Mr. Noonan, until we set it down for disposition in a week or two; right?

Mr. Noonan: Yes, your Honor.

The case was set down for disposition on December 14, 1961, but before sentence was imposed counsel for petitioner made an oral motion that the petitioner be allowed to withdraw his plea of guilty and the case proceed to trial on all 22 counts of the indictment. (DR 37-38, GR-58-59).

This motion was denied without evidence being taken and without argument by counsel.

After denial of the motion, the court heard argument prior to imposing sentence. (DR 43-59; GR 59-75). In his argument the petitioner's counsel, in view of the petitioner's lack of prior felony convictions and based on the fact that the petitioner has three young children, recommended that the court impose a sentence of one year or less and no fine. (Dr. 58-59). Counsel for the Government recommended a four year sentence on counts 1, 2 and 22 with sentences to run concurrently. Counsel for the Government further recommended a $20,000 fine. The Government's recommendations were accepted by the court. (GR 78)

The petitioner on December 18, 1961, filed a motion under Rule 32 of the Federal Rules of Criminal Procedure, to vacate the judgment and to withdraw the guilty plea. (DR 62). The petitioner also filed an affidavit stating that he was innocent as to the entire indictment, and that it was his understanding that the guilty plea on the conspiracy count (Count 22) was limited to the transactions of only one of the eleven corporations named in that count. (DR 63). At the hearing on this motion, it was brought out through the uncontradicted testimony of the petitioner that he suffered from a war-related nervous disorder for which he had received psychiatric treatment, and that at the time the guilty plea was entered he was suffering from this disorder. (DR 68-69, 78-79)

This motion was denied and an appeal was taken. On appeal the decision of the district court was affirmed in a *per curiam* opinion which is annexed hereto as Appendix A.